PRINCIPAL AND AGENT—COMPENSATION OF AGENT—COMMISSIONS.—GIBSON v. BAILEY CO., 89 S. W. 597.—*Held*, that a general agent for the sale of goods in a certain territory, who entices away from his principal orders in that territory which the principal had previously acquired, is guilty of such misconduct as to defeat his right to commissions.

General agent is one whom man puts in his place to transact all his business of a certain kind, as to sell certain kind of ware. *Walker v. Skipwith*, 1 Meigs (Tenn.) 502. An agent must not conceal facts in dealing with a principal nor act adversely to the interests of his principal. *Dennis v. McCagg*, 32 Ill. 429; *Hughes v. Washington*, 72 Ill. 84. Good faith is the vital principle of the law of agency; without it the relations of principal and agent cannot exist, and so jealously guarded is this principle that all departures from it are esteemed frauds. *Keighler v. Savage Mfg. Co.*, 12 Md. 383; *Merryman v. David*, 31 Ill. 404. For gross misconduct in the course of his agency, or intentional frauds upon his principal, he may be held to forfeit all right to compensation as respects any of the business of the principal into which such frauds or misconduct shall have entered. *Porter v. Silvers*, 35 Ind. 295; *Prescott v. White*, 18 Ill. 322. And, if he makes any profit in the course of his agency by any concealed management in selling on account of his principal, the profits will belong exclusively to the principal. *Cottom v. Holliday* 59 Ill. 176.

RAILROADS—CROSSING ACCIDENT—CONTRIBUTORY NEGLIGENCE.—ST. LOUIS I. M. & P. RY. CO. v. HITT ET AL., 88 S. W. 990 (ARK.).—*Held*, that where a brakeman standing at a crossing which was blocked by a standing frieght train, told plaintiffs, who were waiting to drive over the crossing, that it would soon be clear, and when the train cleared the crossing the brakeman was standing nearby and in a position where he could see the tracks better than plaintiffs could, the latter could take into consideration the fact that the brakeman was in a favorable position to see any danger and would doubtless give them warning thereof. Battle and Riddicks, JJ., *dissenting*.

Weight of authority holds that it is the duty of a traveller approaching a railroad crossing to make vigilant use of eyes and ears for the approach of a train before proceeding over. *Davis v. Ry.*, 47 N. Y. 400; *Ry. v. Righter* 42 N. J. L. 180; *Ry. v. Masely*, 57 Fed. Rep. 921; *Wilds v. Ry.*, 29 N. Y. 315; *Ry. v. Beal*, 73 Pa. St. 507. Exercise of some care is not sufficient. *Ry. v. Burke*, 57 N. Y. St. Rep. 7. This rule does not require plaintiff, if in a team, to get out and go on the track for a better view. *Davis v. Ry.*, *supra*. One cannot depend upon another's senses to give warning of danger. *Wiwirowski v. Ry.*, 124 N. Y. 420. Fact that a flagman at a railroad crossing signals a person to cross does not relieve such person from duty of looking and listening for train. *Ry. v. Gustavson*, 21 Col. 393; *Cadwallader v. Ry.*, 128 Ind. 518; *Renner v. Ry.*, 46 Fed. 344. Although plaintiff has right to assume that defendant will do his duty in giving signals, yet he cannot rely on that assumption and thus relieve himself from exercising proper care. *Shaw v. Jewett*, 86 N. Y. 616: *Ry. v. Righter*, *supra*; *Ry. v. Masely*, *supra*.

SALES—RESCISSION BY BUYER—WAIVER OF RIGHT TO RESCIND.—WARD v. MARVIN, 62 ATL. 46 (VT.).—*Held*, that where the buyer of a horse, after dis.

covering fraud of the seller, and after being assured by the seller that, if the horse was not as represented, he would make it right, continues to use the horse as his own, he thereby waived his right to rescind the contract.

A purchaser, upon discovery of a fraud, may treat the contract as voidable and may rescind by returning the property purchased. *State v. Hendricks*, 1 Cent. Rep. (N. J.) 451. But the right to rescind must be exercised within a reasonable time after the fraud is discovered or the time when it should have been discovered. *Young v. Arntze*, 86 Ala. 116. The continuing dealing with the property purchased in reference to the fraudulent transaction as if the contract were subsisting and binding is evidence of a waiver of the fraud and the election to treat the contract as valid and still subsisting; *Oakey v. Cook*, 41 N. J. Eq. 350; unless what is done is merely for the purpose of saving the plaintiff from further loss, without any purpose to give up whatever right he may have either at law or in equity to rescind. *Montgomery v. Pickering*, 166 Mass. 227. And even one whose tender of chattels for the purpose of rescinding is refused, and who takes it back and uses it as his own, thereby waives the benefit of his tender, and his remedy is an action at law for damages. *McCulloch v. Scott*, 52 Ky. 172.

TELEGRAPHS—MESSAGES—DELAY.—HAMRICK v. WESTERN UNION TELEGRAPH CO., 52 S. E. 232 (N. C.).—*Held*, that where delivery of a message informing plaintiff of the serious illness of his wife was delayed for a period of 28 hours, and plaintiff was informed of such delay before he started to his wife's bedside, it was no defense that, in view of the fact that his wife ultimately recovered, he was not damaged, but was in fact relieved of 28 hours anxiety on account of the delay.

This decision is in accord with previous decisions in same state. *Thompson v. W. U. Tel. Co.*, 107 N. C. 449. And also in harmony with the decisions of a few other states. *W. U. Tel. Co. v. Cunningham*, 99 Ala. 314; *Chapman v. W. U. Tel. Co.*, 90 Ky. 265. But beyond all doubt the above decisions are contrary to the weight of authority which holds that damages cannot be recovered from a telegraph company for mental suffering resulting from simple negligence in the prompt delivery of a message announcing the dangerous illness of a relation, as such damages are too uncertain and speculative. *Chase v. Telegraph Co.*, 44 Fed. 554 The law of the state to which the message is sent will govern whether a recovery shall be had or not. *Gray v. Telegraph Co.*, 91 Am. St. Rep. 706. These case must be distinguished from those in which an actual loss is suffered. *Bodkin v. Telegraph Co.*, 31 Fed. 134.

TORT—DAMAGES—SPECIFIC PROOF.—ERIE R. R. CO., 62 ATL., 482 (N. J.).—Plaintiff in a tort action in basing his claim for damages testifies that he took in $1,000 to $1,100 per annum gross. He produced no books nor any evidence as to the expenses of his business or of the proportion of the expenses to the gross income. The court left it to the jury to award damages based on the plaintiff's statement. *Held*, that there being no proof of loss of profits in the business of the plaintiff which the jury could, under the evidence, arrive at with reasonable certainly, it was error for the trial judge to submit the question of the class of damages to the jury, and he should have charged as requested by defendant. Fort, J., citing *East Jersey Water Co. v. Bigelow* 60 N. J. L. 201.